

March 23, 2006



Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in WB Docket No. 05-211

Dear Ms. Dortch:

On March 22, 2006, Harold Feld of Media Access Project met with Fred Campbell of Chairman Martin's office with regard to the above captioned proceeding.

Mr. Feld stressed that the AWS auction, and other auctions involving spectrum that will provide a broad range of fixed and mobile services, require serious reconsideration of the auction rules. More than ten years has passed since the Commission first began to use auctions, spectrum auctions have been employed around the world, and a wealth of academic writing analyzing commission spectrum auctions and other spectrum auctions is available for the Commission to consider as part of its exercise of reasoned judgment. Further, AWS implicates numerous product markets (video, voice, data) in which the Commission intends to foster competition, and in which the Commission has a mandate to ensure deployment to all Americans. It is therefore entirely appropriate for the Commission to adopt the recommendations of NHMC, *et al.* and to adopt a system of anonymous bidding.

Mr. Feld pointed to three papers to incorporate into the record by reference which deal expressly with issues of collusion in FCC auctions. Peter Cramton and Jesse A Schwartz, "Collusive Bidding in the FCC Spectrum Auctions," Contributions to Economic Analysis & Policy 1:1 (2002); Richard Engelbrecht-Wiggans and Charles M. Kahn, "Low Revenue Equilibria in Simultaneous Auctions," Working Paper, University of Illinois, 1999; Sandro Brusco and Guiseppe Lopomo, "Collusion Via Signalling in Simultaneous Ascending Bid Auctions with Heterogeneous Objects, With and Without Complementarities," Review of Economic Studies 69:2 (2002), 407-436. In addition, Mr. Feld referred to the following papers by Paul Klemperer that discuss the problems of collusion in open ascending auction and the value of anonymous bidding in limiting collusion: "Using and Abusing Economic Theory," (2002); "What Really Matters In Auction Design," (2002); "How (Not) To Run Auctions: The European 3G Telecom Auctions" (2001).

Mr. Feld reiterated the arguments in favor of anonymous bidding and the DE

credit recited in previous filings.

In response to a question as to why any large company should be allowed to partner with a DE if the DE credit is intended to benefit small companies, Mr. Feld stated that he did not believe the purpose of the DE credit was merely to pick “lottery winners” in the form of one or two small businesses. Rather, the DE credit should be viewed as one element promoting the purposes of Section 309(j) as a whole. These include “the development and rapid deployment new technologies,” promoting economic opportunity and competition by “avoiding excessive concentration of licenses,” and encouraging “dissemination of licenses among a wide variety of applicants including...minority groups and women,” “preventing unjust enrichments” and generally expanding the availability of advanced wireless services to all Americans. While it is true that in the past the Commission has primarily regarded the DE credit as simply a means to encourage small business bidding in accordance with Section 309(j)(4)(D), these other aspects of the statute should not be ignored.

Accordingly, where allowing a DE to partner with a larger new entrant that offered the possibility of disruptive competition, such as a Microsoft or a Dell, or facilitated increased competition in other markets, such as a DBS provider or cable overbuilder, or promoted deployment in minority communities, rural communities, or other traditionally underserved communities, the Commission should permit material relationships in such cases. By contrast, where permitting a material relationship intensifies the concentration of licenses, while bringing no offsetting benefits, the Commission should not permit such material relationships. Here, where the record clearly demonstrates that allowing large wireless carriers to have material relationships with DEs only serves to increase concentration of licenses, the Commission should prohibit such relationships.

In short, the purpose of modifying the DE credit is not merely to fix the “Gabelli problem.” It is about fixing the auction system so that it serves the broader purposes of Section 309(j).

With regard to the “Gabelli problem,” Mr. Feld emphasized the need to have a rapid post-auction complaint process and clearly defined penalties. The Commission should rely on adjudication to spot “sham” DEs in the same way it relies upon adjudication in indecency proceedings – looking to the facts of the case to determine if the DE is genuinely independent or is defacto controlled by another party, or whether the DE never intended to provide service and merely sought to acquire the license for purposes of trafficking.

With regard to future auctions, the Commission should begin examining how it can better promote ownership of licenses by minority-owned and women-owned businesses, and deployment of wireless services to minority communities, in

accordance with Section 309(j). Mr. Feld urged that the Commission make use of existing task forces, such as the diversity task force, as well as consider creation of a new task force focused on the question of auction reform. In this way, the rulemaking for the 800 MHz spectrum auction could be properly informed by a wealth of data collected in a timely fashion and not under the pressure of a rulemaking.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office. If you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Harold Feld
Senior Vice President

cc:
Fed Campbell